

THE HONORABLE JUSTIN L. QUACKENBUSH

STEVE W. BERMAN, WSBA #12536
KARL P. BARTH, WSBA #22780
TYLER S. WEAVER, WSBA #29413
HAGENS BERMAN SOBOL SHAPIRO LLP
1918 Eighth Avenue, Suite 3300
Seattle, WA 98101
Telephone: (206) 623-7292
Facsimile: (206) 623-0594

Liaison Counsel

[Additional Counsel on Signature Page]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
AT SPOKANE

PLUMBERS UNION LOCAL NO. 12 }
PENSION FUND, Individually and on }
Behalf of All Others Similarly Situated, }
Plaintiff, }
vs. }
AMBASSADORS GROUP INC., et al., }
Defendants. }
No. 2:09-cv-00214-JLQ
CLASS ACTION
PLAINTIFF'S MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF
PROPOSED CLASS ACTION
SETTLEMENT

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1 **I. INTRODUCTION**

2 Plaintiff MARTA/ATU Local 732 Employees Retirement Plan (“Plaintiff”)
 3 hereby moves, pursuant to Federal Rule of Civil Procedure 23(e), for entry of the
 4 [Proposed] Order Preliminarily Approving Settlement and Providing for Notice
 5 (“Notice Order”), submitted herewith, which (1) grants preliminary approval of the
 6 proposed settlement; (2) approves the form and manner of notice and directs the
 7 dissemination of the notice to Class Members; (3) sets a date by which objections, if
 8 any, to the settlement, Plan of Allocation, or the application for an award of attorneys’
 9 fees and expenses must be served and filed with the Court; (4) sets a date by which
 10 Class Members may request exclusion from the Class; (5) sets a date by which Class
 11 Members wishing to participate in the settlement must submit properly completed
 12 Proof of Claim and Release forms and supporting documents; and (6) schedules a date
 13 and time for a hearing to consider final judicial approval of the proposed settlement.

14 The Settling Parties have entered into a Stipulation of Settlement dated as of
 15 July 11, 2011 (the “Stipulation”) that results in the resolution of all claims in this
 16 Litigation for the amount of \$7.5 million in cash on the terms set forth in the
 17 Stipulation.¹

18 Plaintiff submits that the proposed settlement is a good result for the Class and
 19 should be preliminarily approved. The settlement, which was achieved after a
 20 comprehensive pre-discovery investigation by counsel, significant formal discovery,
 21 analysis by expert consultants, aggressive motion practice, and mediator-assisted
 22 settlement negotiations, provides a present recovery for the Class in the face of
 23 substantial challenges to any recovery after continued litigation and trial. In

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25 ¹ Unless otherwise defined, all capitalized terms have the meanings ascribed to
 26 them in the Stipulation.

1 consideration for the payment of \$7.5 million, the settlement will result in the
 2 dismissal of the Second Amended Complaint for Violations of Federal Securities
 3 Laws, filed on October 18, 2010 (the “Complaint”), with prejudice and the release of
 4 all related claims against Defendants in the Litigation. For the reasons set forth
 5 herein, Plaintiff respectfully requests that the Court grant this motion.

6 **II. FACTUAL BACKGROUND**

7 **A. Nature of the Claims**

8 The First Amended Complaint for Violations of Federal Securities Laws (“First
 9 Amended Complaint”) alleges that Ambassadors Group, Inc. (“Ambassadors”), and
 10 certain of its officers and directors violated §§10(b) and 20(a) of the Securities
 11 Exchange Act of 1934 (“Exchange Act”) and Rule 10b-5 promulgated thereunder, by
 12 making false statements thereby causing the inflation of Ambassadors’ stock prices
 13 between February 8, 2007 and October 23, 2007, inclusive. On June 2, 2010, the
 14 Court issued an order denying Defendants’ motions to dismiss, but finding only
 15 certain of the alleged misrepresentations actionable. On October 18, 2010, plaintiffs
 16 filed the Complaint for the purpose of adding an additional plaintiff. On March 17,
 17 2011, the Court certified a plaintiff class of investors to include persons who
 18 purchased Ambassadors’ publicly traded securities between July 24, 2007 and
 19 October 23, 2007, consistent with the June 2, 2010 Order. In the Complaint, Plaintiff
 20 asserts that Defendants misrepresented the status of Ambassadors’ 2008 marketing
 21 campaign and concealed difficulties with respect to obtaining adequate student names
 22 to support the 2008 campaign. As a result, Plaintiff and the Class were economically
 23 harmed.

24 **B. Procedural History**

25 On July 14, 2009, a class action was filed in this Court asserting claims under
 26 the federal securities laws against Ambassadors and certain of its then-current and

1 former officers and directors: Jeffrey D. Thomas, Chadwick J. Byrd, and Margaret M.
 2 Thomas.

3 On September 14, 2009, IBEW Local 351 Welfare, Pension and Annuity Funds
 4 ("IBEW Local 351") filed a motion for appointment of lead plaintiff and appointment
 5 of counsel. The Court entered an order appointing IBEW Local 351 lead plaintiff and
 6 appointing counsel on October 22, 2009. IBEW Local 351 subsequently filed a
 7 motion to withdraw as lead plaintiff, and the Court entered an order appointing
 8 Plumbers Union Local No. 12 Pension Fund as substitute lead plaintiff on January 7,
 9 2010.

10 The First Amended Complaint was filed on January 11, 2010 and Defendants
 11 filed two separate motions to dismiss the First Amended Complaint on February 11,
 12 2010. After hearing argument on May 20, 2010, the Court entered an order on June 2,
 13 2010 denying Defendants' motions to dismiss.

14 On July 2, 2010, defendant Chadwick J. Byrd filed a motion to certify the June
 15 2, 2010 Order for immediate interlocutory appeal. Plaintiff opposed that motion and
 16 the Court denied the request for interlocutory certification on August 10, 2010.

17 On September 22, 2010, Plumbers Union Local No. 12 Pension Fund filed a
 18 motion to intervene MARTA/ATU Local 732 Employees Retirement Plan as an
 19 additional plaintiff for standing purposes in light of the Court's June 2, 2010 Order.
 20 The Court granted the motion to intervene on October 15, 2010. Plaintiff filed the
 21 Complaint on October 18, 2010.

22 On February 18, 2011, Plaintiff filed a motion for class certification. The Court
 23 entered an order certifying the proposed class and appointing Robbins Geller Rudman
 24 & Dowd LLP as class counsel and Hagens Berman Sobol Shapiro LLP as class liaison
 25 counsel on March 17, 2011.

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PLAINTIFF'S MEMO OF P'S & A'S IN SUPPORT
 OF MOTION FOR PRELIMINARY APPROVAL
 OF SETTLEMENT (2:09-cv-00214-JLQ)

HAGENS BERMAN SOBOL SHAPIRO LLP
 1918 Eighth Avenue, Suite 3300, Seattle, Washington 98101
 Telephone: 206/623-7292 • Fax: 206/623-0594

1 As the Court is aware, discovery in federal securities class actions is generally
 2 stayed until claims have survived defendants' motion to dismiss. In the present case,
 3 Plaintiff and Defendants undertook discovery shortly after the Court denied
 4 Defendants' motions to dismiss. The parties exchanged document requests and
 5 interrogatories. Defendants produced thousands of documents which counsel for
 6 Plaintiff reviewed and analyzed. Documents were also obtained from third parties.

7 Both sides relied on the extensive production of internal documents to obtain an
 8 understanding of the facts relevant to evaluating the strengths and weakness of
 9 Plaintiff's claims and Defendants' potential defenses. The discovery was used both to
 10 prepare for the possibility of summary judgment motions and trial and to prepare to
 11 engage in meaningful mediation efforts.

12 **C. Settlement Negotiations and Overview of the Settlement**

13 On April 1, 2011, in an effort to resolve the Litigation, the parties participated
 14 in a mediation before the Honorable Judge Layn R. Phillips (Ret.). As a result of that
 15 mediation, the parties reached an agreement-in-principle to settle the Litigation.

16 All negotiations were at arm's length and well informed by: (i) extensive
 17 informal investigation by counsel; (ii) analysis of the publicly available information
 18 about the Defendants; (iii) significant discovery practice, including review of
 19 thousands of documents produced by Defendants; (iv) an analysis of Ambassadors'
 20 financial wherewithal to sustain a judgment or pay a settlement; (v) discussions with
 21 consulting experts regarding the damages caused by the fraud alleged; (vi) motion
 22 practice; and (vii) frank discussions during the mediation process of the parties'
 23 respective positions concerning the merits of Plaintiff's claims.

24 **D. Summary of the Proposed Settlement**

25 The settlement will be funded by a \$7,500,000 cash payment by or on behalf of
 26 the Settling Defendants, which will be paid into an escrow account on or before ten

1 business days following the Court's preliminary approval of the settlement. The
 2 detailed terms of the settlement are set forth in the Stipulation, which is filed herewith.
 3 The \$7.5 million in cash, less attorneys' fees and any expenses awarded by the Court,²
 4 notice and administration expenses, and any tax expenses payable from the Settlement
 5 Fund (the "Net Settlement Fund"), will be distributed to Authorized Claimants (*i.e.*,
 6 Class Members who file timely and valid Proof of Claim and Release forms) in
 7 accordance with the Plan of Allocation described fully in the Notice of Pendency and
 8 Proposed Settlement of Class Action ("Notice"), attached as Exhibit A-1 to the Notice
 9 Order. The Plan of Allocation is based on Plaintiff's theory of damages (consistent
 10 with the claims upheld by the Court in its orders regarding this action) and treats all
 11 potential claimants in a fair and equitable fashion. Each Authorized Claimant will be
 12 paid that percentage of the Net Settlement Fund that such Authorized Claimant's
 13 claim represents in relation to the total claims of all Authorized Claimants.

14 As set forth below, the settlement meets the standards for preliminary approval
 15 as it falls well within the range of possible approval, was the product of extensive
 16 arm's-length negotiations between experienced counsel, and has no obvious
 17 deficiencies. Notice should also be issued to the Class given the notice program is the
 18 best practicable under the circumstances.

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24 As set forth in the Notice, Lead Counsel will file a written request with the
 25 Court for an award of attorneys' fees and expenses incurred in connection with the
 26 prosecution of the Litigation.

1 **III. ARGUMENT**

2 **A. The Proposed Settlement Satisfies the Criteria for**
 3 **Preliminary Approval**

4 Judicial policy strongly favors settlement of class actions. *Class Plaintiffs v.*
 5 *Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992); *Linney v. Cellular Alaska P'ship*, 151
 6 F.3d 1234, 1238 (9th Cir. 1998); *West v. Circle K Stores, Inc.*, No. CIV. S-04-0438
 7 WBS GGH, 2006 WL 1652598, at *1 (E.D. Cal. June 13, 2006).

8 Approval of a class action settlement normally proceeds in two stages:
 9 preliminary approval, followed by notice to the class, and then final approval. *See*,
 10 e.g., *West*, 2006 WL 1652598, at *2. This case is now at the first stage of the process.
 11 Standards governing whether preliminary approval should be granted have “both a
 12 procedural and a substantive component.” *Young v. Polo Retail, LLC*, No. C-02-4546
 13 VRW, 2006 WL 3050861, at *5 (N.D. Cal. Oct. 25, 2006). The court in *Young*,
 14 quoting from the *Manual for Complex Litigation* and *Newberg on Class Actions*,
 15 explained the procedure as follows,

16 “[i]f the proposed settlement appears to be the product of serious,
 17 informed, non-collusive negotiations, has no obvious deficiencies, does
 18 not improperly grant preferential treatment to class representatives or
 19 segments of the class, and falls within the range of possible approval,
 20 then the court should direct that the notice be given to the class members
 21 of a formal fairness hearing . . .” *Manual for Complex Litigation*,
 22 Second §30.44 (1985). In addition, “[t]he court may find that the
 23 settlement proposal contains some merit, is within the range of
 24 reasonableness required for a settlement offer, or is presumptively
 25 valid.” *Newberg on Class Actions* §11.25 (1992).

26 2006 WL 3050861, at *5 (omission in original); *see also Satchell v. Fed. Express*
 27 *Corp.*, No. C03-2659 SI, 2007 WL 1114010, at *4 (N.D. Cal. Apr. 13, 2007) (granting
 28 preliminary approval after finding proposed settlement was non-collusive, had no
 29 obvious defects, and was within the range of possible settlement approval). Applying
 30 the standards set forth above, the proposed settlement should be preliminarily
 31 approved.

1 **B. The Settlement Is the Result of a Thorough, Rigorous, and**
 2 **Adversarial Process**

3 The procedural and settlement history of this case demonstrate an arm's length,
 4 adversarial relationship between the parties. The settlement discussions were
 5 contentious, with the parties far apart. However, the participation of a skilled
 6 mediator resulted in the parties reaching a settlement.

7 Courts have recognized that “[t]he assistance of an experienced mediator in the
 8 settlement process confirms that the settlement is non-collusive.” *Satchell*, 2007 WL
 9 1114010, at *4; *see also In re Independ. Energy Holdings PLC Sec. Litig.*, No. 00 Civ.
 10 6689 (SAS), 2003 WL 22244676, at *4 (S.D.N.Y. Sept. 29, 2003) (“the fact that the
 11 Settlement was reached after exhaustive arm's-length negotiations, with the assistance
 12 of a private mediator experienced in complex litigation, is further proof that it is fair
 13 and reasonable”). This presumption is particularly apt where, as here, the ultimate
 14 settlement required a number of attempts at mediation and, even then, went into “extra
 15 innings.” *See, e.g., Hicks v. Stanley*, No. 01 Civ. 10071 (RJH), 2005 WL 2757792, at
 16 *5 (S.D.N.Y. Oct. 24, 2005) (“[a] breakdown in settlement negotiations can tend to
 17 display the negotiation's arms-length and non-collusive nature”).

18 **C. The Settlement Merits Preliminary Approval and Class**
 19 **Members Should Be Given Notice and an Opportunity to Be**
 20 **Heard Concerning the Terms of the Settlement**

21 “[A]t this preliminary approval stage, the court need only ‘determine whether
 22 the proposed settlement is within the range of possible approval.’” *West*, 2006 WL
 23 1652598, at *11 (citation omitted). This settlement, which requires \$7.5 million to be
 24 paid by or on behalf of the Settling Defendants, clearly is within such a range and
 25 merits consideration by all of the Members of the Class. Moreover, the fairness and
 26 adequacy of the settlement is further underscored by taking into account the obstacles
 the Class faced in ultimately succeeding on the merits, as well as the expense and

1 likely duration of the Litigation. *See Churchill Vill., L.L.C. v. GE*, 361 F.3d 566, 576
 2 (9th Cir. 2004) (citing risk, expense, complexity, and likely duration of further
 3 litigation as factors supporting final approval of settlement).

4 Here, Plaintiff contends that Defendants falsely assured investors that there had
 5 been no material changes to Ambassadors' marketing campaign for the 2008 travel
 6 year, by assuring investors during a July 24, 2007 conference call that the marketing
 7 campaign for 2008 was similar to prior years. Plaintiff alleges that when Defendants
 8 made statements regarding Ambassadors' 2008 marketing campaign, that the
 9 Defendants concealed substantial changes and difficulties that Ambassadors had
 10 encountered, including a severe deterioration in the student name lists used to identify
 11 students and their families for the direct mail solicitations. Defendants dispute the
 12 severity of the problems identified by Plaintiff, whether investors were mislead, and
 13 whether Defendants were reckless in disclosing the matters identified by Plaintiff.

14 Even if Plaintiff's claims had been upheld at trial, the parties would have
 15 challenged issues of loss causation and the proper methodologies for computing
 16 damages.

17 Defendants have a different view of damages and loss causation. Defendants
 18 contend that even with respect to the stock drop that the Court found had been
 19 sufficiently alleged to meet applicable pleading requirements, recoverable damages (if
 20 any) would be substantially less than asserted by Plaintiff.

21 Plaintiff acknowledges the risk in proving damages and recognizes the risk that
 22 a jury might not find liability or that Defendants' actions caused losses, or that, even if
 23 a jury reached findings favorable to the Class, a jury might substantially reduce the
 24 amount of recoverable damages. There is no doubt that the case both sides would
 25 present at trial would be both complex and nuanced, and would include a "battle of the
 26 experts" on the arcana of damages calculation, isolation of the damages attributable to

1 particular actions by Defendants, as well as proof of scienter and materiality. The
 2 results of the trial would almost certainly not end the Litigation, as one side would
 3 likely appeal, and it is quite possible that both sides would do so in the event that the
 4 jury found for the Class, but substantially reduced the damages sought. In the absence
 5 of a settlement, Class Members would have to wait several more years before they
 6 obtained any relief, even assuming they were successful and overcame every obstacle.
 7 It has been noted that “the difficulty Plaintiffs would encounter in proving their
 8 claims, the substantial litigation expenses, and a possible delay in recovery due to the
 9 appellate process, provide justifications for this Court’s approval of the proposed
 10 Settlement.” *In re Broadwing, Inc. ERISA Litig.*, 252 F.R.D. 369, 373-74 (S.D. Ohio
 11 2006).

12 Taking into account the risks of surviving a summary judgment motion and in
 13 proving liability and damages at trial, the proposed \$7.5 million settlement is a good
 14 result for the Class. The Ninth Circuit has pointed out that the very essence of
 15 settlement is compromise and that a settlement can be acceptable even though it may
 16 amount to only a fraction of the potential recovery. *Linney*, 151 F.3d at 1242. The
 17 proposed settlement equals approximately 17.5% of Plaintiff’s estimate of maximum
 18 total damages, which is significantly above the average recovery in class action
 19 settlements.³ Thus, the proposed settlement meets the standards for preliminary and
 20 final approval.

21
 22

23 ³ A recent study by Cornerstone Research states that in 2010, settlements as a
 24 percentage of estimated “plaintiff-style” damages averaged 2.8%. Ellen M. Ryan,
 25 Laura E. Simmons, *Securities Class Action Settlements*, 2010 Review and Analysis, at
 26 5 (Cornerstone Research, Inc. 2011).

1 **D. Members of the Class Should Be Given an Opportunity to**
 2 **Request Exclusion**

3 Notice of the proposed settlement and of the date and time of the final approval
 4 hearing should also advise Members of the Class of the method for requesting
 5 exclusion from the Class, the time within which they can make such decision, and the
 6 manner in which they can advise the Claims Administrator of their decision to request
 7 exclusion. *See Fed. R. Civ. P. 23(c)(2)(B).* The Notice, annexed to the proposed
 8 Notice Order as Exhibit A-1, advises the Members of the Class of their right to request
 9 exclusion, the consequences of making such a request (*i.e.*, they will not participate in
 10 the settlement, but will retain whatever rights they may have and not be bound by the
 11 settlement's terms and releases), the method by which they can request exclusion, and
 12 the deadline by which they must mail their request for exclusion. In addition, the
 13 Summary Notice (Exhibit A-3 to the Notice Order) advises Class Members of the
 14 deadline for exclusion and how to obtain a copy of the Notice. Providing an
 15 opportunity to request exclusion from the Class satisfies the requirements of Federal
 16 Rule of Civil Procedure 23(c)(2)(B).

17 **IV. THE PROPOSED NOTICE SATISFIES RULES 23(D) AND (E)**
 AND DUE PROCESS REQUIREMENTS

18 Lead Counsel proposes that mailed and published notices be given in the form
 19 of the Notice and Summary Notice, attached as Exhibits A-1 and A-3 to the Notice
 20 Order. Notice to the Class in the form and in the manner set forth in the Notice Order
 21 will fulfill the requirements of due process, comply with the Federal Rules of Civil
 22 Procedure, and inform Class Members of the settlement, their right to request
 23 exclusion from the Class, and their opportunity to appear and be heard at the fairness
 24 hearing.

25 Notice must be "reasonably calculated, under all the circumstances, to apprise
 26 interested parties of the pendency of the action and afford them an opportunity to

1 present their objections.” *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306,
 2 314 (1950); *Mendoza v. United States*, 623 F.2d 1338, 1352 (9th Cir. 1980). Plaintiff
 3 proposes to give interested parties notice in two ways: by First-Class Mail, addressed
 4 to all Class Members who can reasonably be identified and located, and by publication
 5 notice in *Investor’s Business Daily*. In addition, the Notice and Proof of Claim and
 6 Release form will be posted on the website of the Claims Administrator.

7 The form and substance of the notices are also sufficient. “Notice is
 8 satisfactory if it ‘generally describes the terms of the settlement in sufficient detail to
 9 alert those with adverse viewpoints to investigate and to come forward and be heard.’”
 10 *Churchill Vill.*, 361 F.3d at 575 (quoting *Mendoza*, 623 F.2d at 1352). The proposed
 11 form of class notice describes in plain English the terms of the settlement, the
 12 considerations that caused Lead Counsel to conclude that the settlement is fair and
 13 adequate, the maximum counsel fees and expenses that will be sought, the procedure
 14 for requesting exclusion from the Class, the procedure for objecting to the settlement,
 15 the procedure for participating in the settlement, and the date and place of the fairness
 16 hearing. The Notice will fairly apprise Class Members of the settlement and their
 17 options with respect thereto, and fully satisfies all due process requirements.

18 V. PROPOSED SCHEDULE OF EVENTS

19 Plaintiff requests permission to provide notice of the settlement to Class
 20 Members at this time. Lead Counsel have inserted the following proposed schedule
 21 into the Notice Order and its Exhibits, submitted herewith.

22	Date by which the Notice is mailed to Class Members	September 7, 2011
23		
24	Date by which the Summary Notice must be published	September 8, 2011
25		
26	Date by which to file motions in support of the settlement, Plan of	October 11, 2011

1 Allocation, and attorneys' fees and 2 expenses	
3 Last day to request exclusion from 4 the Class	October 24, 2011
5 Last day for Class Members to 6 object to the settlement	October 24, 2011
7 Date by which reply briefs must be 8 filed	November 14, 2011
9 Final approval hearing	At the Court's convenience on or 10 after November 21, 2011
11 Last day for Class Members to 12 submit a Proof of Claim and Release form	December 6, 2011

13 This schedule is similar to those used and approved by numerous courts in class
14 action settlements and provides due process to Class Members with respect to their
15 rights concerning the settlement. *See Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370,
16 1374-75 (9th Cir. 1993).

17 VI. CONCLUSION

18 For the reasons set forth above, Plaintiff respectfully requests that the Court
19 enter the Notice Order: (1) preliminarily approving the proposed settlement; (2)
20 directing the dissemination of notice to Class Members; (3) setting a date by which
21 objections, if any, to the settlement, the Plan of Allocation, or the application for the
22 award of attorneys' fees and expenses must be served and filed; (4) setting a date by
23 which Class Members may request exclusion from the Class; (5) setting a date by
24 which Class Members wishing to participate in the settlement must submit properly
25 completed Proof of Claim and Release forms and supporting documents; and (6)
26 scheduling a date and time for a hearing to consider whether to grant final judicial
approval of the settlement.

1 DATED: July 13, 2011

HAGENS BERMAN SOBOL SHAPIRO LLP
STEVE W. BERMAN, WSBA #12536
KARL P. BARTH, WSBA #22780
TYLER S. WEAVER, WSBA #29413

4 _____ /s/ Karl P. Barth

5 KARL P. BARTH

6 1918 Eighth Avenue, Suite 3300
7 Seattle, WA 98101
8 Telephone: 206/623-7292
9 206/623-0594 (fax)
10 E-mail: steve@hbsslaw.com
11 E-mail: karlb@hbsslaw.com
12 E-mail: tvler@hbsslaw.com

13 Liaison Counsel for Plaintiff

14 ROBBINS GELLER RUDMAN
15 & DOWD LLP
16 JOHN K. GRANT
17 MATTHEW S. MELAMED
18 Post Montgomery Center
19 One Montgomery Street, Suite 1800
20 San Francisco, CA 94104
21 Telephone: 415/288-4545
22 415/288-4534 (fax)
23 E-mail: jgrant@rgrdlaw.com
24 E-mail: mmelamed@rgrdlaw.com

25 ROBBINS GELLER RUDMAN
26 & DOWD LLP
JOY ANN BULL
655 West Broadway, Suite 1900
San Diego, CA 92101
Telephone: 619/231-1058
619/231-7423 (fax)
E-mail: iovb@rgrdlaw.com

Lead Counsel for Plaintiff

ROBERT M. CHEVERIE
& ASSOCIATES
GREGORY CAMPORA
Commerce Center One
333 E. River Drive, Suite 101
East Hartford, CT 06108
Telephone: 860/290-9610

Additional Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on July 13, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Mario Alba, Jr.
Robbins Geller Rudman & Dowd LLP
E-mail: malba@rgrdlaw.com

Karl P. Barth, WSBA No. 22780
Hagens Berman Sobol Shapiro LLP
E-mail: Karlb@hbsslaw.com

John K. Grant
Robbins Geller Rudman & Dowd LLP
E-mail: jgrant@rgrdlaw.com

Douglas W. Greene, WSBA No. 22844
Wilson Sonsini Goodrich & Rosati
E-mail: dgreen@wsgr.com

Barry M. Kaplan, WSBA No. 8661
Wilson Sonsini Goodrich & Rosati
E-mail: bkaplan@wsgr.com

Stellman Keehnle, WSBA No. 9309
DLA Piper LLP (US)
E-mail: stellman.keechnel@dlapiper.com

David A. Rosenfeld
Robbins Geller Rudman & Dowd LLP
E-mail: drosenfeld@rgrdlaw.com

Samuel H. Rudman
Robbins Geller Rudman & Dowd LLP
E-mail: srudman@rgrdlaw.com

1 HAGENS BERMAN SOBOL SHAPIRO LLP
2

3 By /s/ Karl P. Barth
4

5 Karl P. Barth, WSBA No. 22780
6 1918 8th Avenue, Suite 3300
7 Seattle, WA 98101
8 Telephone: (206) 623-7292
9 Facsimile: (206) 623-0594
10 E-mail: karl@hbsslaw.com

11 Liaison Counsel for Plaintiff
12
13
14
15
16
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18
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NOT. OF HEARING RE PL'S MOT.
FOR PRELIMINARY APPROVAL
OF SETTLEMENT
(2:09-cv-00214-JQL)

- 2 -

HAGENS BERMAN SOBOL SHAPIRO LLP
1918 Eighth Avenue, Suite 3300, Seattle, Washington 98101
Telephone: 206/623-7292 • Fax: 206/623-0594